IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

W.P. No. 780 (S/S) of 2006

Date of decision :- 09-11-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 09-11-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 780 (S/S) of 2006

Girish Chandra Joshi
S/o Late Sri Tika Ram Joshi
R/o Dairy Campus-Patal Devi, Almora ...Petitioner

Versus

1. Director, Dairy Development Department
   Mangal Parav, Haldwani (Nainital)
2. Pradhan Prabandhak, Almora Milk Producers
   Cooperative Union Ltd.
3. Chief Development Officer, Almora
4. Sri Satish Chandra Pandey, Assistant Accountant
   Almora Milk Producers Cooperative Union Ltd. ..Respondents

Shri P.S. Adhikari-Sr Advocate, for the petitioner.
Shri N.P. Shah, learned standing counsel for respondent Nos. 1 to 3.
Shri V.K. Bist-Sr. Advocate, for respondent No.4

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

> i) To issue a writ, order or direction in the nature of Certiorari by quashing the impugned order (Annexure-1) passed by the respondent No.2.
>
> ii) To issue a writ, order or direction in the nature of mandamus directing the respondent No.2 for not disturbing the peaceful functioning of the petitioner.
>
> iii) To pass any other order or direction in accordance to the facts of the case which this Hon'ble Court deem fit and proper.
>
> iv) To award cost throughout.

2. The petitioner was appointed as Sales Organizer /Incharge Distribution at District Bageshwar in Almora Milk Producers Cooperative Union Ltd. The petitioner was appointed by the impugned order at District Bageshwar as Incharge Production/Distribution at Bageshwar. It was further pleaded that the said impugned order was passed on the complaint made by the petitioner to the Chief

Development Officer, Almora raising the voice against the corruption going on within the Society. On 18.05.2006, the petitioner made complaint that the coal scandal going on for the last one year for about 36.62 metric tons steam coal which was of about Rs. 1,1,61,860/-. The respondents No.3 initiated the preliminary inquiry on this complaint. Thereafter, the respondent No. 2 had started harassment of the petitioner by seeking explanations. This impugned order has been challenged on the ground that the petitioner had not been transferred but he had been appointed at District Bageshwar and the order cannot be termed as transfer order. Hence this petition has been filed before this court.

3. The respondents had filed the counter affidavit in which they had stated that vide impugned order dated 05.06.2006, the petitioner had been transferred from Almora to Bageshwar and had been posted as Incharge Procurement/ Distribution in District Bageshwar. Besides this, the petitioner had also been given the administrative charge there. The respondents had denied the averment of the petitioner that the service of the petitioner cannot be transferred from one place to the another. It was also pleaded in the counter affidavit that the complaints were also received against the petitioner from the transporters but no action on the complaints of the transporters was taken. The petitioner was given show cause notice for not complying the orders of the General Manager of the Almora Milk Producers Cooperative Union and also for insubordination.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner contended that the petitioner was appointed at Almora and now by the impugned order, he had been displaced and had been appointed afresh at Bageshwar dispensing of his earlier service by way of fresh appointment. It was further contended that the claim of the respondents that it is a transfer order is not sustainable because the impugned order reveals that the petitioner had been appointed by the said order and he had not been transferred by the impugned order. It was further contended by the learned counsel for the petitioner that if the respondents would have transferred him, the impugned order would have been passed in that tone and tenor. Learned counsel for the respondents contended that the petitioner can be transferred at any place in the State and this impugned order has been passed merely to transfer the petitioner from Almora to Bageshwar. The impugned order is quoted hereunder:

^^vkn'k

Jh fxfj'k pUn tks'kh] lYl vkxukbtj@iHkkjh foi.ku dk rRdkyhu iHkko ls tuin ckx'oj esa iHkkjh mik/tu ,oa iHkkjh foi.ku dh dk;ksZ dk fuiogu gsrq fu;qDr fd;k tkrk gS rFkk funsf'kr fd;k tkrk gS fd Jh tks'kh tuin ckx'oj esa nwX/k mik/tu c<ku ,oa foØ; c<ku gsrq i.k :i ls mRrjnk;h jgsxs] lkFk gh tuinh; Lrj ij le;≤ ij i'kklfud ,oa foHkkxh; cSBdksa esa Hkh i.k lqpuk dh lkFk mifLFkr jgsxs] vkj iHkkjh foi.ku dk leLr pkt Hkh lrh'k pUn ik.Ms] lgk;d y[kkdkj dks gLrxr djsA vfoyEc viuh ;ksxnku vk[;k tuin ckx'oj esa nuk lqfuf'pr djsA

¼Mk0 ekgu pUn½

i:/kku ipU/kd^^

Perusal of the impugned order reveals that there is no indication that the petitioner had been transferred from Almora to Bageshwar. It clearly reveals that the petitioner had been appointed in the District Bageshwar as Incharge Procurement/Distribution by the respondents. If the respondents would have passed the transfer order, it could have been indicated in the order itself. Perusal of the order itself reveals that it cannot be termed as a transfer order. As such, the impugned order is bad in law and is herby quashed.

6. Accordingly, impugned order dated 05.06.2006 is hereby quashed and the writ petition is allowed. The parties shall bear their own costs.

7. However, the respondents are at liberty to pass a fresh transfer order not being prejudice by the findings recorded by this court.

8. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

9th November, 2006

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